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Supreme Court, U.S.
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No. 95-1190

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1995

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JOYCE McCLARAN, Director, Child Support Services,
Tennessee Department of Human Services,

Petitioner,

v.

PATRICIA DAVIS, ELLA LARITA LILLARD,
PATRICIA NORTHCUTT, and MARIETTA TURNER,
on their own behalves and on behalf of
all persons similarly situated,

Respondents.

*****

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Pursuant to Rule 39, Respondents Patricia Davis, Ella Larita Lillard, Patricia Nortcutt, and Marietta Turner ask for leave to file the attached Brief in Oppositon without prepayment of costs and to proceed in forma pauperis in this Court. Respondents sought and received leave to proceed in forma pauperis in the Chancery Court for Davidson County, Tennessee and in the Tennessee Court of Appeals. Respondents were appellees in the Supreme Court of Tennessee and were not required

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On Petition For A Writ Of Certiorari To
The Supreme Court of Tennessee

*****

BRIEF IN OPPOSITION

*****

DAVID A. ETTINGER
Counsel of Record
Legal Aid Society of Middle Tennessee
211 Union Street, Suite 800
Nashville, TN 37201
(615) 244-6610

RUSSELL J. OVERBY
Legal Aid Society of Middle Tennessee
526 North Walnut Street
Murfreesboro, TN 37130
Attorneys for Respondents

QUESTIONS PRESENTED FOR REVIEW

Respondents adopt Petitioner's statement of Questions Presented for Review.

TABLE OF CONTENTS

	Page(s)
QUESTIONS PRESENTED FOR REVIEW	i
TABLE OF AUTHORITIES	iii
JURISDICTION	1
STATEMENT OF THE CASE	3
REASONS FOR DENYING THE PETITION	3
A. There is No Significant Conflict Between the Decision Below and the Decisions of the Federal Circuit Courts	4
1. Title IV-D Creates Enforceable Rights	4
2. The Lower Courts are In Agreement That Congress Has Not Precluded Enforcement of Title IV-D In A § 1983 Action	9
3. The Courts Are In Agreement Regarding The Right Of an Individual Custodial Parent To Receive Child Support Services Mandated By Title IV-D	12
B. The Decision Below is Not Inconsistent With the Decisions Of This Court	15
CONCLUSION	19
APPENDIX	App 1
Complaint	App 1
CERTIFICATE OF SERVICE	

TABLE OF AUTHORITIES

Cases	Page(s)
Albiston v. Maine Commissioner of Human Services, 7 F.3d 258 (1st Cir. 1993)	6, 9, 12
Carelli v. Howser, 923 F.2d 1208 (6th Cir. 1991)	5, 10, 11
Cort v. Ash, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975)	5, 7
Cox Broadcasting Corporation v. Cohn, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975)	2
Crawford v. Janklow, 710 F.2d 1321 (8th Cir. 1983)	13
Flynt v. Ohio, 451 U.S. 619, 101 S.Ct. 1958, 68 L.Ed.2d 489 (1981)	1
Freestone v. Cowan, 68 F.3d 1141 (9th Cir. 1995)	6, 10, 14, 15
Horn by Parks v. Madison County Fiscal Court, 22 F.3d 653 (6th Cir. 1994)	11
Howe v. Ellenbecker, 8 F.3d 1258 (8th Cir. 1993), cert denied 114 S.Ct. 1373 (1994)	6, 9
Maine v. Thiboutot, 488 U.S. 1, 100 S.Ct. 2502, 65 L.Ed.2d 555 (1980)	14
O'Dell v. Espinoza, 456 U.S. 430, 102 S.Ct. 1865, 72 L.Ed.2d 237 (1982)	1
Pennhurst State School v. Halderman, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981)	4, 18
San Diego Gas and Electric v. City of San Diego, 450 U.S. 621, 101 S.Ct. 1287, 67 L.Ed.2d 551 (1981)	1
Southern Pacific Company v. Gileo, 351 U.S. 493, 76 S.Ct. 952, 100 L.Ed. 1357 (1956)	2
Suter v. Artist M., 503 U.S. 347, 112 S.Ct. 1360, 118 L.Ed.2d 1 (1992)	18
Wehunt v. Ledbetter, 875 F.2d 1558 (11th Cir. 1989), rehg. en banc denied, 888 F.2d 1398 (11th Cir. 1989), cert. denied, sub nom. Brown v. Ledbetter, 494 U.S. 1027, 110 S.Ct. 1472, 108 L.Ed.2d 609 (1990)	5, 7, 8

Wilder v. Virginia Hospital Association, 496 U.S. 498, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990) 8, 14

Withrow v. Concannon, 942 F.2d 1385 (9th Cir. 1991) 12

Wood v. Tompkins, 33 F.3d 600, 612 (6th Cir. 1994) 11

Wright v. Roanoke Redevelopment and Housing Authority, 479 U.S. 418, 107 S.Ct. 766, 93 L.Ed.2d 781 (1987) 17, 18

Statutes

28 U.S.C. § 1257(a) 1

42 U.S.C. § 603(h) (1), (2) 15

42 U.S.C. § 603(h) (3) 16

42 U.S.C. § 604(a) 14

42 U.S.C. § 652(a) (1) 16

42 U.S.C. § 652(h) 16

42 U.S.C. § 654(1) 16

42 U.S.C. § 654 (4), (6) 16

42 U.S.C. § 654 (13) 16

42 U.S.C. § 1396c 14

42 U.S.C. § 1983 . . . . . passim

42 U.S.C. § 6027 19

Regulations

20 C.F.R. § 305.20(a)(3) 15

JURISDICTION

This Court lacks jurisdiction because the decision below merely denies Petitioner's Motion to Dismiss and is not a final judgment. Petitioner asserts that this Court has jurisdiction pursuant to 28 U.S.C. § 1257(a) which provides as follows:

> Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or the statutes of, or any commission held or authority exercised under, the United States.

In Flynt v. Ohio, 451 U.S. 619, 620, 101 S.Ct. 1958, 1959, 68 L.Ed.2d 489 (1981), this Court held:

> In general, the final-judgment rule has been interpreted "to preclude reviewability . . . where anything further remains to be determined by a State court, no matter how dissociated from the only federal issue that has finally been adjudicated by the highest court of the State."

This Court has repeatedly held that state court decisions remanding a case for trial or re-trial are not final judgments subject to review. O'Dell v. Espinoza, 456 U.S. 430, 102 S.Ct. 1865, 72 L.Ed.2d 237 (1982); San Diego Gas and Electric v. City of San Diego, 450 U.S. 621, 633, 101

S.Ct. 1287, 1294, 67 L.Ed.2d 551 (1981); Southern Pacific Company v. Gileo, 351 U.S. 493, 496, 76 S.Ct. 952, 955, 100 L.Ed. 1357 (1956).

Although the present case was filed more than three years ago, the first witness has yet to be called and the first factual dispute resolved. The decision of the Tennessee Supreme Court does no more than allow plaintiffs an opportunity to prove the factual allegations of their complaint. Although the nature of the federal question requiring decision may change dramatically, nothing will prevent petitioner from seeking review, including review in this Court, if petitioner is dissatisfied with the ruling of the trial court.

Respondents are aware that this Court has recently taken a practical approach to determining whether particular judgments are "final" for purposes of review. In Cox Broadcasting Corporation v. Cohn, 420 U.S. 469, 95 S.Ct. 1029, 43 L.Ed.2d 328 (1975), this Court identified four categories of cases where a judgment may be treated as final despite the necessity for further proceedings in state court. Those categories include cases where the further state court proceedings amount to mere formalities, cases where it can be said for certain that further state court proceedings will neither change the federal questions requiring review nor render review unnecessary, cases where review of federal questions will be unavailable following completion of the state court proceedings, and cases where the unavailability of immediate review will seriously erode a federal policy. Petitioner has not argued that the present case falls within any of these exceptional categories and there are no exceptional circumstances which would justify review at this stage of the proceedings.

There are a number of possible outcomes to the further state court proceedings ordered by the Tennessee Supreme Court which would dramatically affect the nature and necessity for review in this Court. Most obviously, the trial court might find that each respondent has received all services

services required to be provided by Title IV-D. If so, there would be no necessity for this Court to determine whether Title IV-D creates enforceable rights, whether Congress has precluded a § 1983 remedy, or whether more than substantial compliance is required. Conversely, the trial court might find, as alleged by respondents, that respondents have not received required services and that the IV-D program is not in substantial compliance with program regulations. In that event, there would be no necessity for this Court to determine whether injunctive relief is available for individual program violations even when a program is in substantial compliance. While it will generally be true that a party whose motion to dismiss has been denied by state courts will prefer immediate review in this Court, petitioner's inconvenience has never been recognized as a basis for accepting as final a judgment which contemplates further state court proceedings. There is no federal policy which will be seriously eroded by allowing this case to continue in state court until a final judgment is issued. The Petition for Writ of Certiorari should be dismissed because this Court lacks jurisdiction.

STATEMENT OF THE CASE

Respondents adopt Petitioner's Statement of the Case except that respondents would refer the Court to the Complaint filed in this action for a fuller statement of the allegations made by respondents. As petitioner correctly notes, at this stage in the proceedings all allegations of the Complaint must be taken as true. Petition for Writ of Certiorari at page 2. A copy of the Complaint is attached as an appendix to Respondents' Brief in Opposition (App. 1 - App. 17).

REASONS FOR DENYING THE PETITION

Petitioner asks this Court to grant a writ of certiorari in order to resolve the alleged "fundamental division and confusion" of the lower courts regarding the enforceability of Title IV-D of the Social Security Act in an action under 42 U.S.C. § 1983. Petitioner further argues that the

decision of the Tennessee Supreme Court in this case conflicts with the holdings of this Court in cases involving the enforcement of statutes enacted by Congress pursuant to its spending power. Petition for Writ of Certiorari at pp. 6-7. As will be argued below, there is no significant conflict between the decision of the Tennessee Supreme Court in this action and the decisions of the federal circuit courts and there is no conflict between the decision of the Tennessee Supreme Court in this case and the decisions of this Court.

A. There is No Significant Conflict Between The Decision Below The Decisions Of The Federal Circuit Courts

Although petitioner formally raises only a single question for review, Petition for Certiorari, p. i, she goes on to argue that review is appropriate because of a conflict in lower court decisions on the issue on whether Title IV-D of the Social Security Act creates enforceable rights, whether Congress has indicated an intent to preclude enforcement of Title IV-D in a § 1983 action, and whether states are required to comply with Title IV-D in all cases or in substantially all cases. Respondents will address each of these issues separately.

1. Title IV-D Creates Enforceable Rights

In Pennhurst State School v. Halderman, 451 U.S. 1, 27, 101 S.Ct. 1531, 1545, 67 L.Ed.2d 694 (1981), this Court held that a federal statute must impose mandatory duties, rather than vague preferences, upon a state in order to create rights enforceable in an action pursuant to 42 U.S.C. § 1983. In this case, the Tennessee Supreme Court held that Title IV-D of the Social Security Act and its implementing regulations impose clear and mandatory duties on states which choose to accept federal funding and that those duties are enforceable in a § 1983 action. The precise issue passed upon by the Tennessee Supreme Court has also been decided by the United States Courts of Appeal

for the First, Sixth, Eighth, Ninth, and Eleventh Circuits. There is virtually unanimous agreement among the lower courts that Title IV-D creates enforceable rights.

The earliest decision on point, and the decision relied upon by petitioner as creating a conflict, is the decision in Wehunt v. Ledbetter, 875 F.2d 1558 (11th Cir. 1989), rehg. en banc denied, 888 F.2d 1398 (11th Cir. 1989), cert. denied, sub nom., Brown v. Ledbetter, 494 U.S. 1027, 110 S.Ct. 1472, 108 L.Ed.2d 609 (1990). In that case, the court considered whether Title IV-D of the Social Security Act creates rights which are enforceable in an action pursuant to 42 U.S.C. § 1983. The court analyzed the issue under the framework created by this Court in Cort v. Ash, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975), for determining whether a federal statute creates an implied private cause of action. The court focused on the Cort requirement that a plaintiff seeking to enforce a statute be one of the class for whose especial benefit the statute was enacted. Finding that Title IV-D was not intended to benefit custodial parents, but was rather intended to benefit the public by recovering public funds paid as welfare benefits, the court held that Title IV-D does not create rights enforceable in a § 1983 action. Wehunt, supra, 875 F.2d at 1563-1566.

The holding of Wehunt, supra, has never been followed by any other federal court of appeals or by any state supreme court and has been explicitly rejected by four federal circuit courts. In Carelli v. Howser, 923 F.2d 1208, 1211 (6th Cir. 1991), another case seeking to enforce Title IV-D in a § 1983 action, the court held:

> We disagree, at least in part, with the conclusion reached in Wehunt. The court in Wehunt, as do the parties here, seemed to foreclose the possibility that the statute could have more than one class of beneficiaries. We see no reason to conclude that the statute must be read to protect needy families with

> children to the exclusion of protecting the public fisc or vice versa. . . .
>
> In sum, it seems clear that the classes as represented by the plaintiffs here are beneficiaries in fact of Title IV-D and were intended by Congress to be such.

In Albiston v. Maine Commissioner of Human Services, 7 F.3d. 258, 268 (1st Cir. 1993), the court accepted the state's concession that custodial parents are the intended beneficiaries of Title IV-D and held that the statute created enforceable rights:

> Maine concedes, for purposes of this appeal, that the plaintiff class is comprised of "intended beneficiaries" of the requirement that Title IV-D child-support be "promptly" distributed. Although the Eleventh Circuit has held otherwise, see Wehunt v. Ledbetter, 875 F.2d 1558, 1565-66 (11th. Cir. 1989) (Title IV-D's collection provisions primarily intended to benefit "the public fisc," not individual claimants, and therefore do not give rise to enforceable private rights), we accept Maine's concession, which conforms in any event with the conclusion reached by most courts that have considered the issue, and with our prior characterizations of Title IV-D in dictum.

While noting the contrary holding of Wehunt, supra, the court in Howe v. Ellenbecker, 8 F.3d 1258, 1262 (8th Cir. 1993), cert. denied 114 S.Ct. 1373 (1994), held that Title IV-D is intended to benefit custodial parents and creates rights enforceable in a § 1983 action. Finally, and most recently, in Freestone v. Cowan, 68 F.3d 1141, 1146-1147 (9th Cir. 1995), the court noted the contrary holding of Wehunt, supra, but held in agreement with the majority of courts that Title IV-D does create rights enforceable in a § 1983 action.

Although the great weight of authority supports the holding of the Tennessee Supreme Court in this action, petitioners would be correct in asserting that there is some small conflict among the lower courts on this issue if the decision in Wehunt, supra, remained good law. Respondents would respectfully submit that Wehunt is inconsistent with a later decision of this Court, has not been followed by the Eleventh Circuit Court of Appeals in any subsequent case, and would not be followed in the future.

As noted above, the court in Wehunt, supra, analyzed the availability of a § 1983 action following the framework set out by this Court in Cort v. Ash, supra. Judge Clark dissenting, accurately predicted that this reliance would be held erroneous:

> Instead of placing the burden of proof on the defendant in this case, the majority relies at least partially on case law concerning whether a private cause of action can be implied under a federal statute. In Cort v. Ash, 422 U.S. 68, 78, 95 S.Ct. 2080, 2088, 45 L.Ed.2d 26 (1975), the Supreme Court announced a strict four part test to determine whether Congress intended a private cause of action. Under the Cort test, however, the plaintiff must affirmatively prove that Congress intended to allow a private cause of action.
>
> The majority's confusion of the two different lines of case law is extremely significant in this case. The factors considered under each test are similar. But, the fact that the burden of proof is on a state in a § 1983 suit and on a plaintiff in an implied cause of action suit is of fundamental importance. Therefore to the extent that the majority's reliance on the implied right of action cases reflects a misunderstanding of the burden of proof on this issue, the foundation of the majority's analysis evaporates.

Wehunt v. Ledbetter, 875 F.2d at 1568 (Judge Clark dissenting).

One year after the decision in Wehunt, supra, this Court rendered its decision in Wilder v. Virginia Hospital Association, 496 U.S. 498, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990), holding that the Boren Amendment to Title XIX of the Social Security Act creates rights enforceable in a § 1983 action. This Court explicitly noted that the Cort v. Ash, analysis should not be applied in determining whether a statute is enforceable in a Section 1983 action:

> This is a different inquiry than that involved in determining whether a private right of action can be implied from a particular statute. See Cort v. Ash, 422 U.S. 66, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975). In implied right of action cases, we employ the four-factor Cort test to determine "whether Congress intended to create the private remedy asserted" for the violation of statutory rights. [Citations omitted] The test reflects a concern, grounded in separation of powers, that Congress rather than the courts controls the availability of remedies for violations of statutes. [Citations omitted] Because § 1983 provides an "alternative source of express congressional authorization of private suits," Middlesex County Sewerage Authority v. National Sea Clammers Assn., 453 U.S. 1, 19, 101 S.Ct. 2615, 2625, 69 L.Ed.2d 435 (1981), these separation-of-powers concerns are not present in a § 1983 case. Consistent with this view, we recognize an exception to the general rule that § 1983 provides a remedy for violation of federal statutory rights only when Congress has affirmatively withdrawn the remedy.

Wilder, supra, 496 U.S. at 508 fn. 9, 110 S.Ct. at 2517 fn.9. At a minimum, the Court of Appeals for the Eleventh Circuit would need to reexamine the continued validity of the Wehunt analysis in light of this Court's decision in Wilder. It is perhaps significant that the § 1983 analysis of Wehunt

has never been subsequently relied upon by the Eleventh Circuit Court of Appeals or by a district court within the Eleventh Circuit. It is unnecessary for this court to grant certiorari in order to resolve any conflict over the question of whether Title IV-D creates enforceable rights.

2. The Lower Courts Are In Agreement That Congress Has Not Precluded Enforcement Of Title IV-D In A §1983 Action

In this case, the Tennessee Supreme Court held that the administrative audit and oversight provisions of Title IV-D do not indicate a congressional intent to preclude enforcement of that statute in an action pursuant to 42 U.S.C. § 1983. That holding is in accord with the holdings of three federal circuit courts. In Howe v. Ellenbecker, 8 F.3d 1258, 1263 (8th Cir. 1993), cert denied 114 S.Ct. 1373 (1994), the court held: "The federal government's authority to audit and impose monetary sanctions does not constitute 'comprehensive' remedies. . . . We see no enforcement provisions in Title IV-D that show a congressional intent to foreclose these Indian women and children from asserting private remedies." In Albiston v. Maine Commissioner of Human Services, 7 F.3d 258, 269 (1st Cir. 1993), the court held:

> In our view, the OCSE administrative enforcement scheme, authorizing penalties against participating States for 'substantial noncompliance,' seems intended to protect important federal interests, including prompt disbursement of federal funds to needy AFDC recipients as mandated by Congress, by insuring that overall performance by the participating State does not fall below federally-prescribed levels. The private remedy afforded by § 1983, on the other hand, safeguards the individual AFDC recipient's interests in the timely receipt of the mandated federal benefits. Though coexistent, at best these interests overlap imperfectly.

Most recently, in Freestone v. Cowan, 68 F.3d 1141, 1151-1156 (9th Cir. 1995), the court reviewed all of the reported decisions on point and the decisions of this Court interpreting similar statutory schemes. The court noted that the Title IV-D audit provisions allowed for no more than a small reduction in the amount of federal funds provided to a state for payment of AFDC benefits. The audit cannot result in a direct requirement that the state comply with its statutory obligations. The court found no congressional intent to preclude enforcement of Title IV-D in a §1983 action.

Petitioner claims a conflict between the federal circuit courts citing Carelli v. Howser, 923 F.2d 1208 (6th Cir. 1991) for the proposition that Congress has precluded enforcement of Title IV-D in a § 1983 action. Petition for Writ of Certiorari, p. 6 fn.4 and p. 15. That citation is not consistent with a careful reading of the Carelli decision or with subsequent interpretations of that decision by the Court of Appeals for the Sixth Circuit.

Carelli, supra, was a § 1983 action brought by custodial parents seeking to enforce the provisions of Title IV-D. The court, however, put great stress on facts not present in this case. The court noted that the Secretary of Health and Human Services had completed an audit finding that the IV-D program was out of compliance with federal law, had obtained and approved a corrective action plan from the state, and had imposed a financial penalty against the state in the amount of seven million dollars. In the present case, the federal government has taken no administrative actions to remedy the alleged violations of Title IV-D. Complaint, ¶ 42, App. 8. The Carelli, court characterized its holding as follows:

> In many respects, what we decide today is akin to an abstention order, although we do not label it as such. It does share with abstention orders the characteristic that action is not necessarily forever barred. It is

> delayed pending the outcome of another proceeding, a proceeding we feel Congress intended under these circumstances to take precedence.

Carelli, supra, 923 F.2d at 1216. Contrary to petitioner's assertion, the court clearly did not find that § 1983 actions to enforce Title IV-D are precluded:

> We find it unnecessary to decide whether § 1983 can ever be used as a means of securing relief for an alleged statutory violation of Title IV-D. Our holding is much narrower than that. We simply conclude, under the facts here, that plaintiffs have failed to state a claim upon which relief can be granted.

Carelli, supra, 923 F.2d at 1213.

In a later decision, the Sixth Circuit Court of Appeals explicitly indicated that a provision allowing for the withholding of federal funds is insufficient to indicate a congressional intent to preclude enforcement of a statute in a § 1983 action: "In fact, the Act contains no provision for private judicial or administrative enforcement. That the Act gives the Administrator of the Office of Juvenile Justice and Delinquency Prevention the power to terminate or withhold funding does not manifest congressional intent to foreclose reliance on § 1983 to vindicate federal rights." Horn by Parks v. Madison County Fiscal Court, 22 F.3d 653, 658 (6th Cir. 1994). The limited scope of the Carelli holding was explicitly recognized by the court in Wood v. Tompkins, 33 F.3d 600, 612 (6th Cir. 1994):

> However, Defendant has misread our Carelli decision, in which we made it clear that, with regard to the statute at issue in that case, "we do not conclude that private action is foreclosed under all circumstances by

> the comprehensiveness of the remedial process." [Citation and footnote omitted.] Nothing in Carelli remotely suggests that mere oversight by the Secretary in and of itself constitutes a remedial scheme so comprehensive as to foreclose a private remedy pursuant to § 1983; such a suggestion would not only be implausible, but would also be contrary to the explicit holding of Wilder.

Contrary to petitioner's assertion, the holding of the Tennessee Supreme Court that Congress has not precluded enforcement of Title IV-D in a § 1983 action does not conflict with the holding of any federal court of appeals.

3. The Courts Are In Agreement Regarding The Right Of An Individual Custodial Parent To Receive Child Support Services Mandated By Title IV-D

In this case, the Tennessee Supreme Court held that an individual custodial parent has a right to receive child support services which Title IV-D requires to be provided in "all cases" even though the statute protects a state against the imposition of financial penalties as long as the state is in "substantial compliance" with the statute. This holding is fully consistent with the only other decision directly on point by a federal circuit court or a state supreme court. In Albiston v. Maine Commissioner of Human Services, 7 F.3d 258, 269 (1st Cir. 1993), the court held that a § 1983 remedy was necessary precisely because the state would otherwise remain free to violate the statute in individual cases while maintaining substantial compliance.

The decision below is also supported by decisions from two other federal circuit courts interpreting similar statutory provisions. In Withrow v. Concannon, 942 F.2d 1385, 1387 (9th Cir. 1991), the court considered a claim that individual injunctive relief was not available to enforce Title

IV-A (AFDC program) of the Social Security Act because the statute protected the state from imposition of a financial penalty as long as the state was in substantial compliance with the statute. The court held:

> The funding standard is not intended to be the measure of what the regulations require; it is intended to measure how great a failure to meet those requirements should cause funds to be cut off. The language of federal regulations is unequivocal, and states that a decision "shall" or "must" be made within the specified number of days. The regulations' commands effectuate the purpose of the federal categorical programs, to render reasonably prompt assistance to persons in dire need. From the standpoint of the applicants or recipients who are denied hearings and decisions within the time mandated by federal regulations, it is no comfort to be told that there is no federal remedy because the state is in "substantial compliance" with the federal requirements.

Similarly, in Crawford v. Janklow, 710 F.2d 1321, 1326 (8th Cir. 1983), the court rejected an argument that a statutory provision conditioning federal funding on substantial compliance with program standards precluded injunctive relief: "The 'withholding of funds' remedy is not couched in terms of exclusivity, and that remedy is woefully inadequate as to persons in dire need of the proper distribution of home energy assistance funds rather than the withholding of funds altogether. Furthermore, the home energy assistance legislation is geared toward reduced federal administrative supervision, which fully comports with the recognition of private remedies in federal court without unnecessary intervention by the Secretary of Health and Human Services."

Although this Court has not directly addressed the issue, the result reached by this Court in leading cases is certainly consistent with the decision below in the present case. In Maine v. Thiboutot, 488 U.S. 1, 100 S.Ct. 2502, 65 L.Ed.2d 555 (1980), this Court held that Title IV-A of the Social Security Act is enforceable in a § 1983 action. The Court did not assign any significance to a statutory provision protecting the state from the imposition of a financial penalty absent "a failure to comply substantially" with the statute. 42 U.S.C. § 604(a). Similarly, in Wilder v. Virginia Hospital Association, 496 U.S. 498, 110 S.Ct. 2510, 110 L.Ed.2d 455 (1990), the Court held that a section of Title XIX of the Social Security Act is enforceable in a § 1983 action. The Court noted the statutory provision for administrative enforcement, 42 U.S.C. § 1396c, but attached no significance to the statutory language conditioning a loss of funding on "a failure to comply substantially" with the statute. See, Wilder v. Virginia Hospital Association, supra, 496 U.S. at 521, 110 S.Ct. at 2524.

Petitioner cites Freestone v. Cowan, 68 F.3d 1141 (9th Cir. 1995) for the proposition that "plaintiffs use of § 1983 [is] limited in scope to enjoining a state to improve overall Title IV-D program performance to a level of substantial (i.e., 75%) compliance." Petition for Writ of Certiorari, at p. 6. This is simply a mistaken citation. In fact, the Freestone court strongly indicated in dicta that substantial compliance would be inadequate, but reserved judgment:

> We do not agree that Withrow, can be so easily distinguished, but we need not decide that point here. The question whether federal law precludes an individual remedy during periods in which the state is in "substantial compliance", although an interesting one, is not before us. The district court made no factual findings as to the level of Arizona's compliance but rather disposed of this case on the legal ground

> that a § 1983 action is generally unavailable in Title IV-D cases.

Freestone, supra, 68 F.3d at 1151. Contrary to petitioner's assertion, there is no conflict between the decision below and the decisions of other federal circuit courts or state supreme courts.

B. The Decision Below is Not Inconsistent With the Decisions of This Court

Petitioner argues that the Tennessee Supreme Court disregarded the controlling decisions of this Court by relying upon duly promulgated regulations rather than statutory provisions to find the existence of enforceable rights. As explained below, petitioner misreads both the statute and the holdings of this Court.

With respect to the statute, petitioner quite naturally focuses on statutory language prescribing the circumstances in which a failure to comply with the statute will result in a loss of federal funds. Petitioner correctly notes that federal funds will not be withheld unless a state program is not in substantial compliance with program requirements and is not operating under an approved corrective action plan. 42 U.S.C. § 603(h)(1), (2). Petition for Writ of Certiorari, App. 66-67. Somewhat inconsistently, but not surprisingly, petitioner relies upon a regulation defining substantial compliance as compliance in 75% of all cases, 20 C.F.R. § 305.20(a)(3), Petition for Writ of Certiorari, App. 235, rather than upon the statutory language which states:

> . . . a state which is not in full compliance with the requirements of this part shall be determined to be in substantial compliance with such requirements only if the Secretary determines that any non-compliance with such requirements is of a technical nature which does

> not adversely affect the performance of the child support enforcement program.

42 U.S.C. § 603(h)(3), Petition for Writ of Certiorari, App. 68-69. If the statute said no more on the subject of program performance, petitioner would be correct in suggesting that regulations requiring more than substantial compliance exceeded statutory authority. In fact, the statute clearly and unambiguously requires the establishment of program standards by regulation and requires that the state comply with those regulations.

Pursuant to 42 U.S.C. § 652(a)(1), Petition for Writ of Certiorari, App. 71-72, the Secretary of Health and Human Services is required to establish state program standards for locating absent parents, establishing paternity, and collecting child support which are adequate to assure that child support programs will be effective. Pursuant to 42 U.S.C. § 652 (h), Petition for Writ of Certiorari, App. 82, the program standards established by the Secretary must impose upon participating states time limits for responding to requests for assistance, locating absent parents, establishing paternity and support, and enforcing support orders.

Congress did not require the rule making activity described above as an idle exercise. Rather, pursuant to 42 U.S.C. § 654 (1), Petition for Writ of Certiorari, App. 83, a state choosing to participate in the Title IV-A program must have a child support enforcement plan in effect in all political subdivisions of the state. Pursuant to 42 U.S.C. § 654 (4), (6), Petition for Writ of Certiorari, App. 83-86, a participating state must provide child support services to individuals receiving AFDC or Medicaid benefits and to individuals making a request for child support assistance. Most significantly and unambiguously, 42 U.S.C. § 654 (13), Petition for Writ of Certiorari, App. 88, requires "that the State will comply with such other requirements and standards

as the Secretary determines to be necessary to the establishment of an effective program for locating absent parents, establishing paternity, obtaining support orders, and collecting support payments." If petitioner is truly uncertain as to her obligation to comply with regulations implementing Title IV-D, her confusion results from a failure to read the statute rather than any ambiguity in the statute.

Petitioner misreads the holdings of this Court when she asserts that the existence of enforceable rights must be determined based solely upon statutory language rather than the requirements of validly issued regulations. In Wright v. Roanoke Redevelopment and Housing Authority, 479 U.S. 418, 107 S.Ct. 766, 93 L.Ed.2d 781 (1987), this court considered whether a statute requiring that public housing tenants pay 30% of their adjusted income as rent created an enforceable right on behalf of tenants claiming that their rent included payment for normal utility usage. The Court noted that despite the absence of any statutory provision regarding utility payments, regulations issued by the United States Department of Housing and Urban Development defined "rent" as including the cost of reasonable utility usage. The Court found that the statute together with the implementing regulations was sufficient to create an enforceable right:

> Respondent nevertheless asserts that the provision for a "reasonable" allowance for utilities is too vague and amorphous to confer on tenants an enforceable "right" within the meaning of § 1983 and that whole matter of utility allowances must be left to the discretion of the PHA, subject to supervision by HUD. The regulations, however, defining the statutory concept of "rent" as including utilities, have the force of law [citation omitted], they specifically set out guidelines that the PHAs were to follow in establishing utility allowances, and they require notice to tenants and an opportunity to comment on proposed allowances. In our view, the benefits Congress intended to confer on tenants are sufficiently specific and definite to qualify

> as enforceable rights under Pennhurst and § 1983, rights that are not, as respondent suggests, beyond the competence of the judiciary to enforce.

Wright, supra, 479 U.S. at 431-432, 107 S.Ct. at 774-775. In contrast, this Court in Suter v. Artist M., 503 U.S. 347, 112 S.Ct. 1360, 1369, 118 L.Ed.2d 1 (1992), held a provision of Title IV-E requiring states to make reasonable efforts to preserve families failed to create an enforceable right specifically because the duties imposed on the state were not set forth in regulations: "What is significant is that the regulations are not specific, and do not provide notice to the States that failure to do anything other than submit a plan with the requisite features, to be approved by the Secretary, is a further condition on the receipt of funds from the Federal Government." The Court below faithfully followed the holdings of this Court in looking to duly authorized and promulgated regulations in determining whether Title IV-D imposes obligations with sufficient clarity to create enforceable rights.

Petitioner relies heavily on this Court's decision in Pennhurst State School v. Halderman, 451 U.S. 1, 101 S.Ct. 1531, 67 L.Ed.2d 694 (1981). In that case, this Court held that § 6010 of the Developmentally Disabled Assistance and Bill of Rights Act does not create enforceable rights primarily because compliance with that section is not, in any way, a condition for the receipt of federal funds. This Court noted the contrast with other provisions of the Act: "When Congress intended to impose conditions on the grant of federal funds, as in §§ 6005, 6009, 6011, 6012, 6063 and 6067, it proved capable of doing so in clear terms. Section 6010, in marked contrast, in no way suggests that the grant of federal funds is 'conditioned' on a State's funding the rights described therein." Pennhurst, supra, 451 U.S. at 23, 101 S.Ct. at 1543. The Court's decision establishes that

whether compliance with a statute is a condition for the receipt of federal funds is a very significant factor in determining whether the statute creates enforceable rights. Contrary to petitioner's argument in this case, however, there is nothing in the Pennhurst decision or other decisions of this Court to suggest a statute only creates enforceable rights if the receipt of federal funds is conditioned on total and absolute compliance with the statutory duties. Indeed, only "a failure to comply substantially" with those provisions of the Developmentally Disabled Assistance and Bill of Rights Act of 1975, acknowledged in Pennhurst as creating enforceable rights, will result in a loss of federal funds. 42 U.S.C. § 6027. Because compliance with Title IV-D, including regulations issued by the Secretary, is an express condition for the receipt of federal funds, there is no conflict between the decision below and the decisions of this Court.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied

Respectfully submitted,

DAVID A. ETTINGER
Counsel of Record
Legal Aid Society of Middle Tennessee
211 Union St., Suite 800
Nashville, TN 37201
(615) 780-7119

RUSSELL J. OVERBY
Legal Aid Society of Middle Tennessee
526 North Walnut Street
Murfreesboro, TN 37130
Attorneys for Respondents

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

PATRICIA DAVIS, ELLA LARITA LILLARD, PATRICIA NORTHCUTT, and MARIETTA TURNER, on their own behalves and on behalf of all persons similarly situated,	)	
Plaintiffs,	)	
vs.	)	NO. 92-3314 - I
JOYCE McCLARAN, Director, Child Support Services, Tennessee Department of Human Services, VICTOR S. JOHNSON, III, District Attorney General for the Twentieth Judicial District, and THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY,	)	
Defendants.	)	

CLASS ACTION COMPLAINT

INTRODUCTION

1. This Complaint seeks declaratory and injunctive relief to enforce plaintiffs' rights, under Title IV-D of the Social Security Act, 42 U.S.C. § 651 et. seq., to assistance in collecting child support. Pursuant to Title IV-D, defendant Joyce McClaran is responsible for the state-wide operation of a child support services delivery system which meets federally mandated minimum standards. Pursuant to a contract (attached hereto as Exhibit A) with defendant McClaran, defendant Victor S. Johnson, III, is required to provide child support services to residents of Davidson County, Tennessee. With the knowledge and acquiescence of defendant McClaran, defendant Johnson has failed to assign adequate staff to the Child Support Services Division of the Davidson County District Attorney's Office and has failed to meet federally mandated minimum standards for the provision of child support services. Despite an anticipated profit from the provision of child support services of $182,281.00 during the current fiscal year, defendant Johnson has assigned less than one third of the staff needed to fulfill

his contractual obligations. Defendant Johnson actually collects child support, in any amount, in only 4% of his open child support cases. As a result of the defendants' actions and omissions, plaintiffs have been deprived of child support income needed to maintain a subsistence standard of living and some plaintiffs have been forced to rely upon welfare assistance. Plaintiffs have suffered and continue to suffer irreparable harm for which they have no adequate remedy at law.

JURISDICTION

2. The court has jurisdiction pursuant to T.C.A. §§ 16-11-101, 16-11-102, and 16-11-103. Declaratory relief is authorized by T.C.A. § 29-14-102. Mandamus relief is authorized by T.C.A. § 29-25-101. Injunctive relief is authorized by 42 U.S.C. § 1983.

PARTIES

3. Defendant Joyce McClaran is the Director of the Child Support Services Division of the Tennessee Department of Human Services and is sued in her official capacity.

4. Defendant Victor S. Johnson, III, is the Tennessee District Attorney General for the Twentieth Judicial District and is sued in his official capacity.

5. Defendant The Metropolitan Government of Nashville and Davidson County is a public corporation and a nominal party to the contract between defendants McClaran and Johnson. As such, The Metropolitan Government of Nashville and Davidson County is responsible for the actions of defendant Johnson and is a necessary party to this action.

6. Plaintiffs Patricia Davis, Ella Larita Lillard, Patricia Northcutt, and Marietta Turner, are residents of Davidson County who have been deprived by defendants of child support services to which they are entitled under law.

7. Pursuant to Rule 23 of the Tennessee Rules of Civil Procedure, plaintiffs bring this action on their own behalf and

on behalf of a class composed of Davidson Coun residents who are now or who in the future will be entitled to child support services under Title IV-D of the Social Security Act.

8. The proposed class is so numerous that joinder of all members would be impracticable. Approximately 12,000 families in Davidson County, Tennessee, receive AFDC benefits and, as a result, are automatically eligible for Title IV-D services. Defendant Johnson has approximately 67,000 open child support cases.

9. There are questions of law and fact common to the class. A common question of law is whether defendants are obligated to provide child support services to members of the plaintiff class as described below. A common question of fact is whether defendants actually provide child support services as required by law.

10. The claims of the named plaintiffs are typical of the claims of the class. There is nothing unusual regarding the claims of the named plaintiffs which would place their interests in conflict with the interests of the plaintiff class.

11. The named plaintiffs are represented by competent counsel and will fairly and adequately protect the interests of the class.

12. The defendants have acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

STATUTORY AND REGULATORY BACKGROUND

13. Pursuant to 42 U.S.C. § 602(a)(26) and T.C.A. § 71-3-124, parents and children who receive AFDC benefits are required to assign their rights to child support to the State of Tennessee. Families receiving AFDC benefits are entitled to a bonus payment equal to the first $50.00 per month of child support collected. 42 U.S.C. § 657(b)(1).

14. Pursuant to T.C.A. § 71-3-104, AFDC benefits in Tennessee are equal to a percentage of an annually determined amount referred to as the "standard of need." For example, at the present time, the standard of need for a family of three is $426.00 per month and the maximum AFDC benefit is 43.5% of the standard of need or $185.00 per month.

15. Pursuant to T.C.A. § 71-3-104(g), the Tennessee Department of Human Services has issued regulations which permit a family receiving AFDC to receive child support collected each month up to the difference between the family's countable income and the standard of need.

16. Pursuant to 42 U.S.C. § 602(a)(27), a state which elects to participate in the Aid to Families With Dependent Children Program (AFDC) must operate a child support program in compliance with Title IV-D of the Social Security Act, 42 U.S.C. § 651 et. seq. (Title IV-D).

17. Pursuant to 42 U.S.C. § 652(a), the United States Department of Health and Human Services is required to establish by regulation standards for child support services programs under Title IV-D. Those regulations have for force and effect of federal law. (For the court's convenience, a complete set of the applicable regulations, 45 C.F.R., Part 302 and Part 303 is filed herewith as Exhibit B, and incorporated by reference.)

18. Pursuant to 45 C.F.R. §§ 302.10 and 302.12, a participating state must establish a single and separate organizational unit to be responsible for the provision of child support services throughout the state.

19. Pursuant to 45 C.F.R. § 302.31, a participating state is required to provide child support services to all individuals receiving Aid for Families with Dependent Children.

20. Pursuant to 45 C.F.R. § 302.33, a participating state is required, upon application, to provide child support services to any individual seeking help in the collection of child support.

21. Pursuant to 45 C.F.R. § 303.2, a participating state must, within twenty days of receiving a referral of an individual receiving Aid for Families with Dependent Children or an application for child support services, solicit necessary information and open a case file in which all future case activity must be documented.

22. Pursuant to 45 C.F.R. § 303.3, a participating state must use all available means of locating an absent parent within seventy-five days of determining that location information is needed and, if unable to initially locate an absent parent, must repeat location efforts at least every three months and whenever new information which might aid in locating an absent parent is received.

23. Pursuant to 45 C.F.R. § 303.5, a participating state is required to file petitions to establish paternity within ninety days of determining that such a petition is necessary or within ninety days of locating an alleged father and is required to determine paternity within twelve months of successful service of a paternity petition.

24. Pursuant to 45 C.F.R. § 303.4(d), a participating state is required to establish a support obligation or commence proceedings to establish a support obligation within ninety days of establishing paternity or locating an absent parent.

25. Pursuant to 45 C.F.R. § 303.6, a participating state must monitor cases with established support orders and identify any case with a child support arrearage equal to at least one month of child support. Within thirty days of identifying a case at least one month in arrears, the state must take appropriate enforcement action not requiring service of process. Within sixty days of identifying a case at least one month in arrears or locating an absent parent, a state must attempt service of process if necessary for enforcement of a support obligation.

The state must annually submit all cases with an arrearage of at least one month of support for federal income tax refund intercept. If a state is unable to enforce a child support obligation, it must determine the reason enforcement efforts have failed and determine an appropriate time for further enforcement efforts.

26. Pursuant to 45 C.F.R. § 303.20, a participating state is required to ensure the availability of sufficient staff at the state and local levels to provide child support services within the regulatory time frames.

27. The Tennessee Department of Human Services has issued a Child Support Services Manual containing instructions which are binding on contractors providing child support services. That manual requires that contractors permit inspection of their child support case files by authorized counsel for recipients of IV-D services.

28. Pursuant to T.C.A. § 36-5-107, agencies participating in the Title IV-D program are required to utilize at least 70% of any federal incentive payments received to encourage and improve the cost effectiveness of child support enforcement efforts.

29. Pursuant to T.C.A. § 8-21-403, a clerk of court receiving child support payments is entitled to receive a fee equal to 5% of such payments.

FACTUAL ALLEGATIONS RELEVANT TO PLAINTIFFS AND THE PROPOSED CLASS

30. The Child Support Services Division of the Tennessee Department of Human Services is the single state agency responsible for the provision of child support services in Tennessee pursuant to Title IV-D.

31. Pursuant to a contract between the Tennessee Department of Human Services and defendant Victor S. Johnson,

III. District Attorney General for the Twentieth Judicial District of Tennessee, defendant Johnson is responsible for providing child support services to residents of Davidson County Tennessee which fully comply with Title IV-D and its implementing regulations.

32. Pursuant to the contract referred to above, approximately every six months the Child Support Services Division has reviewed a random sample of defendant Johnson's child support case files to determine whether defendant Johnson has complied with Title IV-D requirements in at least 75% of all cases. Each of six separate reviews since March of 1988 have found multiple and significant failures by defendant Johnson to meet the regulatory child support standards in at least 75% of the cases reviewed. True and correct copies of the correspondence between the defendants regarding these reviews are filed herewith as Exhibit C and incorporated by reference.

33. Despite the review findings in Exhibit C, defendant McClaran has not taken any action to ensure that residents of Davidson County receive adequate child support services.

34. Despite his repeated submission of corrective action plans since May of 1988 (see Exhibit C), defendant Johnson has failed to comply with the requirements of his contract and with the requirements of Title IV-D.

35. In January of 1992, the Maximus Corporation evaluated the Tennessee Child Support Services System at the request of defendant McClaran. (A copy of the report from the Maximus Corporation is filed herewith as Exhibit D and incorporated by reference.)

36. The Maximus Report found that defendant Johnson had 58,011 open child support cases and a full time equivalent child support staff of 28. Defendant Johnson was actually collecting child support in only 4% of all open cases. The report recom-

mended that defendant Johnson increase his staffing level by over 300% to the equivalent of 95 full time positions in order to meet his contract and Title IV-D obligations.

37. Defendant Johnson's proposed budget for the fiscal year beginning July 1, 1992, sought a total of seven additional child support positions. That same budget projected child support collection expenses of $675,282.00 and reimbursements, including federal incentive payments of $857,563.00.

38. In addition, the Davidson County Circuit Court Clerk and Juvenile Court Clerk will receive fees in the approximate amount of $450,000.00 as a result of defendant Johnson's child support collections. Those fees far exceed the cost of receiving and disbursing child support.

39. On information and belief, defendant Johnson has failed to utilize at least 70% of his federal incentive payments to improve child support collection services required by T.C.A. § 36-5-107.

40. Defendant Johnson has never requested from local or state authorities permission to hire adequate staff for filling his child support services obligations.

41. Defendant Johnson has persistently failed to provide child support services meeting the minimum standards of Title IV-D as required under his contract with the Tennessee Department of Human Services.

42. Defendant McClaran has known since at least 1988 that child support services meeting the requirements of Title IV-D have not been provided to Davidson County residents and has failed to insure the availability of those services. In addition, the federal government has taken no action to insure the availability of child support services to Davidson County residents.

43. As a result of the defendant's actions and omissions, plaintiffs and members of the proposed class have been deprived of child support income and, in some cases, required to subsist

on welfare benefits. Plaintiffs have suffered ..d continue to suffer irreparable harm. Plaintiffs have on adequate remedy at law.

44. On information and belief, defendents believe that approval of successive corrective action plans prepared by defendant Johnson since 1988 satisfies their obligations under Title IV-D despite their persistent failure to provide child support services meeting minimum standards. Plaintiffs disagree and assert that defendents failure to meet Title IV-D requirements since 1988 is in clear violation of the law.

FACTUAL ALLEGATIONS RELEVANT TO THE NAMED PLAINTIFFS

45. Plaintiff Patricia Davis gave birth to Latasha Davis on June 30, 1979. She has not been married to Latasha's father, Billy Stewart, and has received AFDC for Latasha since she was born. Ms. Davis sought assistance from defendant Johnson in establishing paternity and setting a support obligation while Latasha was still an infant.

46. In 1983 or 1984, defendant Johnson's agents assisted Ms. Davis in establishing that Mr. Stewart is Latasha's father. Defendant Johnson's agents made no effort to establish a child support obligation until 1991 when they filed a petition to set support in the Juvenile Court of Davidson County.

47. Following a hearing on October 29, 1991, the Juvenile Court for Davidson County entered an order requiring Mr. Stewart to pay support in the amount of $142.00 per month by income assignment. The Clerk of Court was unable to serve the income assignment order and Mr. Stewart failed to make any child support payments directly to the Clerk of Court. Despite knowing Mr. Stewart's home address, defendant Johnson's agents have made no efforts to enforce the child support order.

48. Plaintiff Davis has another child, Thaddeus Davis, born on August 23, 1982. Ms. Davis has not been married to the child's father, Thaddeus Smyer, and has received AFDC for the

child since he was born. Although Mr. Smyer's home address and likely place of employment have been known, defendant Johnson's agents have never offered assistance in establishing paternity or support.

49. Defendant Johnson's agents have refused to allow Ms. Davis' counsel to review his file on her. On information and belief, defendant Johnson's agents have done nothing further to enforce the child support obligation of Mr. Stewart or to establish a child support obligation against Mr. Smyer.

50. Plaintiff Ella Larita Lillard is the mother of Kimberly M. Waters. In 1980 Ms. Lillard obtained a divorce from Kimberly's father, Michael Eugene Gordon and he was ordered to pay child support of $20.00 per week plus the Clerk's fee of 5% beginning September 5, 1980. Kimberly's father has only made a total of $787.00 in payments with respect to this child support obligation.

51. For the last several years Ms. Lillard has repeatedly contacted defendant Johnson's office asking for assistance in enforcing the child support order and also inquiring as to the status of the father's IRS Tax Returns which were intercepted by his office. She was repeatedly told that her case was closed and that nothing could be done. Approximately eight or nine months ago she was told that her case would be reopened and she would be called back but she has never heard anything from defendant Johnson's office with respect to this. She has repeatedly informed the office of the father's home address where he has lived ever since the parties divorce in 1980. She has also repeatedly informed the Child Support Office that the father is working. However, to the best of Ms. Lillard's knowledge, defendand Johnson's office has taken no action whatsoever to enforce the father's child support obligation.

52. Plaintiff Patricia Northcutt is the mother of a thirteen year daughter, Brandy Dixon. Ms. Northcutt separated from Brandy's father, Ronald F. Dixon in 1983 and obtained a

divorce from Mr. Dixon in 1987. Mr. Dixon has made no signficant child support payments since the separation in 1983.

53. Since 1983, Ms. Northcutt has made repeated efforts to obtain help in collecting child support from defendant Johnson's agents. She has frequently been told that defendant Johnson's agents had too many child support cases and not enough staff to handle all cases. Defendant Johnson's agents frequently said that they could not assist Ms. Northcutt because they could not locate Mr. Dixon. On at least four occasions, Ms. Northcutt has located Mr. Dixon and notified defendant Johnson's agents of his whereabouts. On each occasion, defendant Johnson's agents failed to take any action against Mr. Dixon.

54. Most recently, in late August of 1992, Ms. Northcutt saw Mr. Dixon at a grocery store and wrote down the license plate number of his vehicle. She immediately provided this information to defendant Johnson's agents and defendant Johnson's agents were able to obtain a home address for Mr. Dixon. As of October 6, 1992, defendant Johnson's agents had failed to take any action to enforce Mr. Dixon's child support obligation. Agents of defendant Johnson told Ms. Northcutt at various times that they had too many cases to handle or that her file had been misplaced. Around September 22, 1992, Ms. Northcutt spoke with a Mr. McDonald, an agent of defendant Johnson, who promised to call her back with information regarding her case within three days. Ms. Northcutt had not heard from Mr. McDonald as of October 6, 1992.

55. Defendant Johnson's agents have refused to allow Ms. Northcutt's counsel to review his file on her. On information and belief, defendant Johnson's agents have done nothing to enforce the child support obligation of Mr. Dixon.

56. Plaintiff Marietta Turner has three children, Carioni Turner, age 11; Demetria Turner, age 10; and Thomas Turner, III, age six. Pursuant to a divorce decree entered in the Fourth

Circuit Court for Davidson County, Tennessee. In September of 1989, the children's father, Thomas L. Turner, Sr., is obligated to pay child support in the amount of $346.66 per month.

57. Ms. Turner sought assistance from defendant Johnson's agents after December of 1989 when Mr. Turner stopped paying child support. In January of 1990, defendant Johnson's agents assisted Ms. Turner in filing a petition under the Uniform Reciprocal Enforcement of Support Act (URESA), which was forwarded to the child support agency in the state of Arizona where Mr. Turner resides.

58. Since January of 1990, Ms. Turner has made repeated unsuccessful attempts to obtain information from defendant Johnson's agents regarding the status of her URESA petition.

59. Defendant Johnson's agents have refused to allow Ms. Turner's counsel to review his file on Ms. Turner. On information and belief, defendant Johnson's agents have done nothing further to enforce Ms. Turner's child support order.

CLAIMS FOR RELIEF

60. The acts and omissions of the defendants as alleged herein deprive plaintiffs under color of state law of rights secured to them by Title IV-D of the Social Security Act in violation of 42 U.S.C. § 1983.

61. Each defendant has a clear and non-discretionary duty to provide child support services meeting the requirements of Title IV-D. Plaintiffs seek a writ of mandamus requiring defendants to perform their duties.

62. Defendant Johnson has a clear and non-discretionary duty to utilize at least 70% of his federal incentive payments to improve child support collection services as required by T.C.A. § 36-5-107. Plaintiffs seek a writ of mandamus requiring defendant Johnson to perform his duty.

63. The parties are in disagreement regarding the extent of the defendants' obligation to provide child support services and the adequacy of services provided. Plaintiffs seek a

declaratory judgment to resolve this dispute wit. ıe defendants and declare their rights under the laws and regulations cited herein.

64. Plaintiffs are third party beneficiaries of the contract between the defendants and seek to enforce their rights under that contract.

65. Defendant Johnson's failure to provide plaintiffs with notice regarding the status of their cases or to allow plaintiffs' counsel to inspect their child support files deprives plaintiffs of due process rights in violation of 42 U.S.C. § 1983, the Fourteenth Amendment to the United States Constitution, and Article I, Section 8 of the Tennessee Constitution.

WHEREFORE, PLAINTIFFS PRAY:

1. That process be issued requiring defendants to answer this complaint;

2. That this action be certified as a class action;

3. That plaintiffs be awarded preliminary and permanent injunctive relief, and/or a writ of mandamus, requiring defendants to provide child support services as required by Title IV-D of the Social Security Act;

4. That the court declare that defendants are obligated to provide child support services meeting the requirements of Title IV-D of the Social Security Act and that defendants have failed to fulfill that duty;

5. That defendants be ordered to pay the cost of this cause, including plaintiffs' reasonable attorney fees; and

6. For such other or additional relief as the court finds to be just and proper.

DAVID A. ETTINGER, TN BAR #: 6566
RUSSELL J. OVERBY, TN BAR #: 2520
Legal Services of Middle Tennessee, Inc.
211 Union St., Suite 800
Nashville, TN 37201
Telephone: (615) 244-6610
Attorneys for Plaintiffs

VERIFICATION

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, PATRICIA DAVIS, do solemnly swear that the statements made in the foregoing Complaint are true to the best of my knowledge, information, and belief; that I am a resident of the State of Tennessee; that owing to my poverty I am not able to bear the expenses of the action I am about to commence; and that I am justly entitled to the relief sought to the best of my belief.

Patricia A Davis
PATRICIA DAVIS

Sworn to and subscribed before me this 8th day of October, 1992.

NOTARY PUBLIC

My commission expires: Nov. 25, 1995

VERIFICATION

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, ELLA LARITA LILLARD, do solemnly swear that the statements made in the foregoing Complaint are true to the best of my knowledge, information, and belief; that I am a resident of the State of Tennessee; that owing to my poverty I am not able to bear the expenses of the action I am about to commence; and that I am justly entitled to the relief sought to the best of my belief.

Ella L. Lillard
ELLA LARITA LILLARD

Sworn to and subscribed before me this 5th day of November, 1992.

NOTARY PUBLIC

My commission expires: 11/25/95

VERIFICATION

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, PATRICIA NORTHCUTT, do solemnly swear that the statements made in the foregoing Complaint are true to the best of my knowledge, information, and belief; that I am a resident of the State of Tennessee; that owing to my poverty I am not able to bear the expenses of the action I am about to commence; and that I am justly entitled to the relief sought to the best of my belief.

Patricia L Northcutt
PATRICIA NORTHCUTT

Sworn to and subscribed before me this 26th day of October, 1992.

Notary Public
NOTARY PUBLIC

My commission expires: Nov 25, 1995

VERIFICATION

STATE OF TENNESSEE)
)
COUNTY OF DAVIDSON)

I, MARIETTA TURNER, do solemnly affirm ~~swear~~ that the statements made in the foregoing Complaint are true to the best of my knowledge, information, and belief; that I am a resident of the State of Tennessee; that owing to my poverty I am not able to bear the expenses of the action I am about to commence; and that I am justly entitled to the relief sought to the best of my belief.

Marietta Turner
MARIETTA TURNER

Sworn to and subscribed before me this 16th day of October, 1992.

D.A. Sh
NOTARY PUBLIC

My commission expires: Dec 25 1995

CERTIFICATE OF SERVICE

I, David A. Ettinger, certify that a true and exact copy of the foregoing Motion For Leave to Proceed In Forma Pauperis, Declaration of Patricia Davis, Declaration of Ella Larita Lillard, Declaration of Patricia Northcutt, Declaration of Marietta Turner, and Brief in Opposition was sent by first class postage prepaid mail to Charles W. Burson, 500 Charlotte Avenue, Nashville, Tennessee 37243-0497, attorney for Petitioner Joyce McClaran; that all parties required to be served have been served; and that the names, addresses, and telephone numbers of counsel are as follows:

Charles W. Burson
Attorney General and Reporter
State of Tennessee
500 Charlotte Avenue
Nashville, TN 37243-0497
Telephone: (615) 741-3225

Attorney for Petitioner Joyce McClaran

David A. Ettinger
Legal Aid Society of Middle Tennessee
211 Union Street, Room 800
Nashville, TN 37201
Telephone: (615) 244-6610

Attorney for Respondents Patricia Davis, Ella Larita Lillard, Patricia Northcutt, and Marietta Turner

this 2nd day of February, 1996.

David A. Ettinger